

# State of Missouri

## Office of Secretary of State

Case No. AP-08-13

IN THE MATTER OF:

NEW CENTURY INVESTMENTS, LLC; and  
H. KENT DESSELLE,

Respondents.

Serve New Century Investments, LLC at:  
1425 South Noland Road  
Independence, Missouri 64055

Serve H. Kent Desselle at:  
c/o Desselle Law Office, LLC  
1425 South Noland Road  
Independence, Missouri 64055

### **CONSENT ORDER**

On May 9, 2008, the Enforcement Section of the Securities Division (the "Division") of the Office of Secretary of State, through its Assistant Commissioner of Securities Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed (the "Petition"). After reviewing the Petition, the Commissioner issued an Order to Cease and Desist with findings of fact and conclusions of law. The Respondents and the Securities Division desire to settle the allegations and the matters raised by the Securities Division. As used herein, the term "Respondents" refers to New Century Investments LLC and H. Kent Desselle.

Respondents and the Securities Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondents alleged activities.

### **I. CONSENT TO JURISDICTION**

1. The Securities Act of 2003 shall be administered by the Commissioner of Securities (the "Commissioner"). Section 409.6-601(a), RSMo. (Cum. Supp. 2007).
2. The Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under the Act. Section 409.6-604(h), RSMo. (Cum. Supp. 2007)
3. Respondents and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these Respondents and these matters pursuant to the Missouri Securities Act, Chapter 409, et seq.

4. Respondents and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2007), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act. ”

## **II. WAIVER AND EXCEPTION**

5. Respondent waives its rights to a hearing with respect to this matter.
6. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever releases and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents and the Securities Division stipulate and agree that, should the facts contained herein prove to be false or incomplete, the Missouri Securities Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

## **III. CONSENT TO COMMISSIONER'S ORDER**

8. Respondents and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. **Respondents neither admit nor deny the Commissioner’s Findings of Fact and Conclusions of Law as set forth below, but consent to the entry of this Order solely for the purposes of this proceeding and any other proceeding that may be brought to enforce the terms of this Consent Order.**
10. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without any factual basis.

## **IV. COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. FINDINGS OF FACT**

11. New Century Investments, LLC (“New Century”), was a limited liability company organized in the State of Missouri on December 4, 1997. New Century has a business address of 1425 South Noland Road, Independence, Missouri 64055. New Century’s records on file with the Corporations Division of the Office of Missouri Secretary of State, indicate that New Century is in the business of property development and investments.
12. Harley Kent Desselle (“Desselle”) is an organizer of New Century. Desselle is also a licensed attorney in the State of Missouri.
13. As used herein, the term “Respondents” refers to New Century and Desselle.

14. In the fall of 1996, a Missouri resident (“MR”) met with attorney Desselle regarding the death of MR’s husband. MR had received approximately seven hundred and fifty thousand dollars (\$750,000.00) in insurance money.
15. MR stated that she trusted Desselle, who was an acquaintance of her late husband. Desselle, among other things, told MR that:
  - a. he would assist her in investing a portion of these insurance funds; and
  - b. all investments would be low risk.
16. Desselle subsequently received over four hundred thousand dollars via personal checks from MR made payable to Desselle, Desselle’s law firm or New Century in the following amounts:
  - a. on or about September 1, 1996, MR sent fifty thousand dollars (\$50,000.00) to Desselle to invest in a note with a maturity date of September 1, 2009 (the “Note”);
  - b. on or about November 1, 1996, MR sent two hundred and fifty thousand dollars (\$250,000.00) to Desselle to invest in a government backed investment in an SRS account (“SRS Investment”) that was to be used or invested in HUD housing;
  - c. on or after September 1, 1996, MR sent over forty thousand dollars (\$40,000.00) to Desselle to invest in an annuity with Allstate Insurance Company (“Allstate Annuity”); and
  - d. on or about January 1, 1997, MR sent sixty thousand dollars (\$60,000.00) to Desselle to invest in a real estate investment trust (“REIT”).
17. MR stated to an investigator with the Division, among other things, that:
  - a. all investments were made by check; and
  - b. she never signed or received any contracts.
18. In the fall of 2001, MR stated that Desselle began paying MR two thousand dollars (\$2,000.00) per month in interest.
19. On or about February 1, 2006, Desselle and New Century sent MR information that her current value of investments through New Century totaled six hundred and sixteen thousand, eight hundred and seventy-four dollars (\$616,874.00).
20. On October 7, 2007, MR received a statement from Desselle and New Century that stated, among other things, the following:

“New Century Investments, LLC  
1425 South Noland Road  
Independence, Missouri 64055

Investment Analysis: [MR] Investments through October 1, 2007;

Investment One: Secured \$250,000.00 SRS Note;

Date of Note: November 1, 1996

Balance; \$371,230.00; Maturity September 15, 2009;

Investment Two: Annuity (Balance Paid to Client)

Investment Three: \$60,000 REIT Note dated January 1, 1997; Current value \$103,700; Matures January 2, 2009;

Investment Four: \$50,000 Note dated September 1, 1996; Matures September 1, 2009, Current Value \$92,124.00. Total Current Value of all Investments: \$567,054.00

Monthly interest \$2126.45 (assuming only \$2,000.00 per month is taken); Amounts in excess of \$2,000 per month deducts from principal.”

21. On February 19, 2008, MR wrote to Desselle via email. In this email MR stated, among other things, the following:

“I want to start the process of taking out my investments. My future is depending on the money that is in your company.”

22. On February 19, 2008, Desselle sent MR an email that stated, among other things, the following:

“Your funds are secure and not dependent on New Century.

I certainly understand your concern but there are no issues that have changed the value or protection in your investments.”

23. MR again requested a return of her funds and on February 27, 2008, Desselle sent MR an email that stated, among other things, that: “your investment was lost between 1998 and 2000.”
24. On or about February 26, 2008, the Missouri Securities Division received information that indicated that Respondents allegedly offered and sold securities in Missouri.
25. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for any of the securities offered by the Respondents in the State of Missouri
26. Desselle omitted to tell MR:
- that Desselle was not registered to offer or sell securities in the State of Missouri;
  - that Desselle was not licensed to sell insurance;
  - that the notes were not registered to be offered or sold in the State of Missouri;
  - information about the specific risks associated with the investments;

- e. information about the financial condition of the issuers; or
  - f. facts or information regarding the auditing, accounting and supervision practices of New Century.
27. Desselle made misrepresentations to the Missouri investor, including the following:
- a. that the value of the investments on February 1, 2006, was six hundred and sixteen thousand, eight hundred and seventy-four dollars (\$616,874.00), when in fact the investments had been lost;
  - b. that the value of the investments on October 1, 2007, was five hundred sixty-seven thousand, and fifty-four dollars (\$567,054.00), when in fact the investments had been lost;
  - c. that the investments were low risk;
  - d. that the SRS Note was backed by the government; or
  - e. that the funds were secure on February 19, 2008, when in fact they were not.

### **B. CONCLUSIONS OF LAW**

28. The acts described in the Findings of Facts constitute violations of Sections 409.3-301, 409.4-402, and 409.5-501, RSMo. (Cum. Supp. 2007).
29. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Securities Division, finds and concludes that the Commissioner has jurisdiction over these Respondents and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended this act. See Section 409.6-605(b), RSMo. (Cum. Supp. 2007).

### **C. ORDER**

**NOW, THEREFORE**, it is hereby Ordered that:

1. Respondents are ORDERED to cease and desist from:
  - A. violating or materially aiding in any violation of 409.3-301, RSMo. (Cum. Supp. 2007), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2007), in the State of Missouri unless those securities are registered with the Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-304;
  - B. violating or materially aiding in any violation of 409.4-402, RSMo. (Cum. Supp. 2007), by transacting business in this state as an agent without being registered as an agent in this state under the Missouri Securities Act of 2003 or being exempt from registration as an agent; and
  - C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2007), by, in connection with the offer or sale of securities,

making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

2. Respondents are ordered to pay MR the amount of five hundred and sixty thousand dollars (\$560,000.00). Twenty thousand dollars (\$20,000.00) of this amount has been paid and Respondents will send a certified copy of these payments within thirty days of the execution of this Order. The remaining amounts will be paid in ten (10) equal monthly installments of four thousand dollars (\$4,000.00) on the 30th of each month beginning December 30th, 2008. Respondents will pay the balance due of five hundred thousand dollars (\$500,000.00) on or before December 1, 2010. This money shall be sent to the Division and made payable to the Missouri Investor Restitution Fund and will be distributed by that fund to MR. If Respondents fail to make any payment described in this Paragraph, the full amount remaining together with all suspended amounts shall be due and payable after ten (10) days written notice to cure, and if any amount remains unpaid after receipt of such ten-day cure period, the Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2007);
3. Respondents shall pay to the Investor Education and Protection Fund the sum of fifteen thousand dollars (\$15,000.00) immediately upon the effective date of this Order. Ten thousand dollars (\$10,000.00) of this payment will be suspended provided that Respondents comply with the terms of this order. The remaining five thousand dollars (\$5,000.00) shall be sent to the Division at 600 West Main St., Jefferson City, Missouri 65101 within thirty (30) days of the execution of this Order.
4. Respondents shall pay their own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 24TH DAY OF NOVEMBER, 2008.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

(Signed)  
Mary S. Hosmer  
Assistant Commissioner of Securities  
Missouri Securities Division

H. Kent Desselle

New Century Investments, LLC

Approved as to form  
(Signed)

David Cosgrove, Attorney for Respondents